

IMPORTANT: PLEASE READ BEFORE COMPLETING APPLICATION

Notice to applicant: Predetermination of independent contractor status is based upon the information provided in this application. Participation in the submission of a fraudulent or intentionally misleading form can result in fines of up to \$1,000 for an individual and up to \$10,000 for a corporation, partnership or other legal entity. **The predetermination WILL NOT apply if you do not perform work consistent with the information provided in this application.**

13-A. Independent contractor. A person who performs services for remuneration is presumed to be an employee unless the employing unit proves that the person is free from the essential direction and control of the employing unit, both under the person's contract of service and in fact and the person meets specific criteria. In order for a person to be an independent contractor:

A. The following criteria must be met:

- (1) The person has the essential right to control the means and progress of the work except as to final results;
- (2) The person is customarily engaged in an independently established trade, occupation, profession or business;
- (3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity;
- (4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work; and
- (5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted; and

B. At least 3 of the following criteria must be met:

- (1) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work;
- (2) The person is not required to work exclusively for the other individual or entity;
- (3) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work;
- (4) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work;
- (5) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person;
- (6) The work is outside the usual course of business for which the service is performed; or
- (7) The person has been determined to be an independent contractor by the federal Internal Revenue Service.

STATE OF MAINE
WORKERS' COMPENSATION BOARD
27 STATE HOUSE STATION
AUGUSTA, ME 04333-0027
Tel. 207-287-7071 / Fax 207-287-5413

APPLICATION FOR PREDETERMINATION OF INDEPENDENT CONTRACTOR STATUS
TO ESTABLISH A REBUTTABLE PRESUMPTION

NOTICE

- The predetermination process is voluntary under the Maine Workers' Compensation Act.
- By submitting this Application you are not relinquishing your rights to be covered under the Maine Workers' Compensation Act—if you are injured you may still file a claim with the Board.
- You also may have other rights as an employee under Maine law.
- Approved predeterminations are “portable” (may be submitted to any employing unit) and are valid for one year from the date of approval.
- The predetermination will only be valid with respect to an employing unit if you work consistent with the answers on this application
- A predetermination from the Board is not binding on the Department of Labor.
- **You must retain a copy of this application for your records. You may be required to produce this application along with the decision that you receive from the Board.**

Pursuant to 39-A M.R.S.A. § 105, _____(Applicant Name) hereby requests a predetermination by the Maine Workers' Compensation Board that the Applicant is an independent contractor.

APPLICANT

Name:

Doing Business As (d/b/a) (if applicable):

Physical address:

Mailing address:

Telephone:

E-mail address:

Type of work you do:

Note: Information provided on this form, not otherwise confidential, may be shared with other state and federal agencies.

SECTION I

AN APPLICATION IS NOT COMPLETE UNLESS YOU ANSWER ALL OF THE QUESTIONS IN THIS SECTION AND PROVIDE ALL REQUIRED INFORMATION. INCOMPLETE APPLICATIONS WILL BE RETURNED.

(1) The person has the essential right to control the means and progress of the work except as to final results.

(a) Do you have the right to decide how the agreed upon work is going to be performed?

☐ Yes ☐ No

(b) Other than the completion date for the work, do you have the right to determine when the work is to be performed?

☐ Yes ☐ No

(2) The person is customarily engaged in an independently established trade, occupation, profession or business.

(a) Please state the nature of your trade, occupation, profession or business.

(b) Please indicate how your business is organized:

- ☐ sole proprietor
- ☐ corporation
- ☐ limited liability company
- ☐ partnership
- ☐ professional corporation

(c) How long have you been independently engaged in your trade, occupation, profession or business?

(d) Have you worked for or searched for work from more than one source during the 12 months prior to the date of this application? ☐ Yes ☐ No

(e) Did you file a business tax return last year for the trade, occupation, profession or business listed in Question 2(a)? ☐ Yes ☐ No

(3) The person has the opportunity for profit and loss as a result of the services being performed for the other individual or entity.

(a) Please check the following expenses that you incur and bear the cost of in performing your work:

- ☐ rent and utilities
- ☐ tools and equipment
- ☐ training
- ☐ advertising
- ☐ payments to business managers and agents
- ☐ wages or salaries of assistants
- ☐ licensing/certification/professional dues
- ☐ insurance
- ☐ postage and delivery
- ☐ repairs and maintenance
- ☐ supplies
- ☐ travel
- ☐ leasing of equipment
- ☐ depreciation
- ☐ inventory/cost of goods sold
- ☐ other

(b) Do you provide the materials necessary to complete your work? ☐ Yes ☐ No

(c) Do you have an opportunity to increase your profit in performing the work contracted for? ☐ Yes ☐ No

(d) Do you risk losing money in performing the work contracted for? ☐ Yes ☐ No

(e) Are you liable for money damages if you fail to complete the work specified in your contract? ☐ Yes ☐ No

(f) Are you liable for money damages if you fail to do quality work? ☐ Yes ☐ No

(g) Can you recover money damages if the employing unit ends the contract early? ☐ Yes ☐ No

(4) The person hires and pays the person's assistants, if any, and, to the extent such assistants are employees, supervises the details of the assistants' work.

(a) Do you have the right to use assistants to help perform your work? ☐ Yes ☐ No
(If Yes, answer questions (b), (c) and (d). If No, proceed to question (5).

- (b) Do you use assistants to perform your work? ☐ Yes ☐ No
- (c) Do you personally pay your assistants? ☐ Yes ☐ No
- (d) Are you personally responsible for supervising the details of your assistants work? ☐ Yes ☐ No
- (e) If you use employees, do you provide Workers' Compensation coverage for your employees? ☐ Yes ☐ No

(5) The person makes the person's services available to some client or customer community even if the person's right to do so is voluntarily not exercised or is temporarily restricted.

- (a) Do you advertise? ☐ Yes ☐ No
- (b) Do you have the right to work for more than one source at a time? ☐ Yes ☐ No
- (c) Do you determine what you work on and when you will work on it? ☐ Yes ☐ No

SECTION II

YOU MUST ANSWER ALL QUESTIONS IN THIS SECTION AND SATISFACTORILY ANSWER AT LEAST THREE (3). INCOMPLETE APPLICATIONS WILL BE RETURNED.

(6) The person has a substantive investment in the facilities, tools, instruments, materials and knowledge used by the person to complete the work.

- (a) Have you made a substantive investment in the facilities, tools, instruments, materials and knowledge you use to complete your work? ☐ Yes ☐ No
- (b) Do you provide the essential equipment that is used to complete your work? ☐ Yes ☐ No
- (c) Are you required to lease essential equipment from the employing unit? ☐ Yes ☐ No
- (d) If the answer to (6)(c) is "Yes," are you paying fair market value for the equipment that you are leasing? ☐ Yes ☐ No

(7) The person is not required to work exclusively for the other individual or entity.

- (a) Are you required to work exclusively for one employing unit? ☐ Yes ☐ No
- (b) Have you worked for more than one employing unit during the past 12 months? ☐ Yes ☐ No

(8) The person is responsible for satisfactory completion of the work and may be held contractually responsible for failure to complete the work.

(a) Are you liable for money damages if you fail to complete the work specified in your contract? ☐ Yes ☐ No

(b) Are you liable for money damages if you fail to do quality work? ☐ Yes ☐ No

(9) The parties have a contract that defines the relationship and gives contractual rights in the event the contract is terminated by the other individual or entity prior to completion of the work.

(a) Can you recover money damages if the contract is terminated by the employing unit before the conclusion of the contracted work? ☐ Yes ☐ No

(10) Payment to the person is based on factors directly related to the work performed and not solely on the amount of time expended by the person.

(a) Are you paid by the hour for your work? ☐ Yes ☐ No

(b) Are your contracts for certain pieces of work at a certain price? ☐ Yes ☐ No

(11) The work is outside the usual course of business for which the service is performed.

(a) Is the work you do different than the work done by the employing units you contract with? ☐ Yes ☐ No

(b) In the past, have you worked as an employee for any employing unit with whom you contract? ☐ Yes ☐ No

(12) The person has been determined to be an independent contractor by the federal Internal Revenue Service.

(a) Have you received an approved Form SS-8, Determination of Worker Status for Purposes of Federal Employment Taxes and Income Tax Withholding from the Internal Revenue Service? ☐ Yes ☐ No

(b) If yes, please provide the approval date of the determination. _____.

APPLICANT

**THIS APPLICATION MUST BE SIGNED.
UNSIGNED APPLICATIONS WILL NOT BE PROCESSED.**

Read carefully and sign below:

I hereby certify the foregoing information is truthful and accurate. I understand should any information contained in this application be found to be intentionally misleading or fraudulent, the predetermination of independent contractor status shall be nullified and I may be subject to fines as described above.

I further understand this predetermination of independent contractor status is based upon the information provided in this application. I understand changes in these circumstances may nullify the predetermination of independent contractor status. I agree to notify the Workers' Compensation Board of any changes to the information in this application or the circumstances described herein.

You must retain a copy of this application for your records. You may be required to produce this application along with the decision that you receive from the Board.

Date

Signature of Applicant